

12-5-2012

## State v. Gorringer Respondent's Brief Dckt. 39638

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**COPY**

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

MAX J. GORRINGE,

Defendant-Appellant.

NO. 39638, 39640, 39641

**BRIEF OF RESPONDENT**

**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF CANYON**

**HONORABLE THOMAS J. RYAN  
District Judge**

**LAWRENCE G. WASDEN  
Attorney General  
State of Idaho**

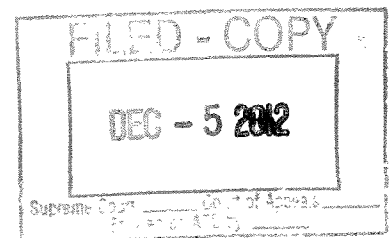
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## STATEMENT OF THE CASE

### Nature of the Case

Max J. Gorringer appeals in Docket No. 39641<sup>1</sup> from the judgment entered upon his conditional guilty plea to attempted strangulation.

### Statement of Facts and Course of Proceedings

Gorringer was charged in three separate cases with multiple crimes against the same victim. In Docket No. 39638 (Canyon Co. Case No. CR2011-16000), he was indicted for the felony domestic battery and second degree kidnapping of Stephanie Young on or between January 1 and January 9, 2011. (R., vol. 4, pp.660-61.) In Docket No. 39640 (Canyon Co. Case No. CR2011-12451), he was indicted for the felony domestic battery and second degree kidnapping of Ms. Young on or about February 26, 2011. (R., vol. 1, pp.48-50.) In Docket No. 39641 (Canyon Co. Case No. CR2011-13855), he was indicted for the attempted strangulation and second degree kidnapping of Ms. Young on or about January 10, 2011. (R., vol. 2, pp.348-49.)

In all three cases, Gorringer filed a notice of intent to seek dismissal of the charges for “[v]iolation of Idaho Criminal Rule 5.1” (R., vol. 1, pp.51-52; R., vol. 2, pp.364-65; R., vol. 4, pp.677-78) and subsequently supplemented the notices with supporting documentation and case law (R., vol. 1, pp.76-97; R., vol. 3,

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<sup>1</sup> By order of the Idaho Supreme Court, Docket No. 39641 has been consolidated with Docket Nos. 39638 and 39640 for purposes of appeal. (R., vol. 2, pp.318-19; R., vol. 4, pp.653-54; R., vol. 5, pp.936-37.) Gorringer concedes, however, that there are no viable appellate issues in Docket Nos. 39638 and 39640 and, as such, “does not pursue those cases on appeal.” (Appellant’s brief, p.3 n.3.)

pp.380-401; R., vol. 4, pp.693-714). In Docket No. 39641, he also filed a formal "Motion to Dismiss for Violation Of Rule 5.1" (R., vol. 3, pp.492-93), which the district court heard over the course of two hearings on September 13, 2011 (R., vol. 3, pp.501-04), and October 11, 2011 (R., vol. 3, pp.516-19). At the first hearing on his motion in Docket No. 39641, Gorringer's attorney asked the court to dismiss the case or, alternatively, to reinstate the bonds Gorringer had posted after he was arrested but before the superseding indictment was filed. (9/13/11 Tr., p.2, L.25 – p.12, L.10.) At the continued hearing on October 11, 2011, Gorringer's attorney abandoned dismissal as a remedy for the alleged violation of I.C.R. 5.1, stating: "Our remedy is that we're not seeking dismissal. The only thing we're seeking is that the bonds that were in place before be reinstated. Nothing more." (10/11/11 Tr., p.15, Ls.6-8.) The district court denied the motion in its entirety, finding no violation of I.C.R. 5.1. (10/11/11 Tr., p.15, L.16 – p.18, L.2.)

After the district court denied Gorringer's motion, the parties entered into a binding Rule 11 plea agreement. (R., vol. 4, pp.580-83.) Pursuant to the agreement Gorringer pled guilty to attempted strangulation in Docket No. 39641, the state dismissed the remaining charges in all three cases, the parties agreed to the imposition of a fixed one and one-half year sentence and were free to argue with respect to the indeterminate portion of the sentence, and Gorringer reserved the right to appeal both the denial of his motion to dismiss for an alleged I.C.R. 5.1 violation and the denial of a motion to dismiss for a speedy trial violation, the latter of which was filed by Gorringer but never ruled upon by

the district court. (R., vol. 4, pp.580-83; 11/1/11 Tr., p.1, L.8 – p.16, L.4; see also R., vol. 5, pp.861-67 (motion to dismiss for speedy trial violation).) The district court accepted Gorringer's plea and, consistent with the terms of the plea agreement, imposed a unified sentence of 15 years with one and one-half years fixed. (R., vol. 4, pp.636-37.) Gorringer timely appeals. (R., vol. 4, pp.640-42, 648-52.)

## ISSUE

Gorringer states the issue on appeal as:

Mindful of the fact that defense counsel expressly abandoned the remedy sought (dismissal) and thereby invited any error, did the district court nonetheless err in denying Mr. Gorringer's motion to dismiss for violation of Idaho Criminal Rule 5.1?

(Appellant's brief, p.4.)

The state rephrases the issues on appeal as:

Is Gorringer precluded by the invited error doctrine from challenging the denial of his motion to dismiss?



## ARGUMENT

### Gorringer Is Precluded By The Invited Error Doctrine From Challenging The Denial Of His Motion To Dismiss

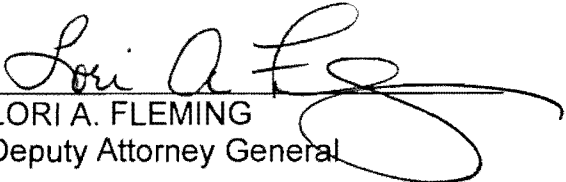
Citing Idaho Criminal Rule 5.1, Gorringer moved to dismiss the charges against him in Docket No. 39641. (R., vol. 3, pp.492-93.) At a hearing on the motion, Gorringer's defense counsel expressly advised the district court that Gorringer was not seeking dismissal, stating: "Our remedy is that we're not seeking dismissal. The only thing we're seeking is that the bonds that were in place before be reinstated. Nothing more." (10/11/11 Tr., p.15, Ls.6-8.) Consistent with Gorringer's request, the district court denied the motion to dismiss. (10/11/11 Tr., p.17, L.23 – p.18, L.2.)

On appeal, Gorringer concedes that defense counsel below "expressly abandoned" the remedy of dismissal. (Appellant's brief, pp.4-6.) Nevertheless, he contends that the district court erred by denying his motion to dismiss. (Appellant's brief, p.5.) Gorringer's appellate claim is unavailing because, in addition to being unsupported by any argument or citation to relevant legal authority, it is barred by the doctrine of invited error. State v. Norton, 151 Idaho 176, 187, 254 P.3d 77, 88 (Ct. App. 2011) ("The doctrine of invited error applies to estop a party from asserting an error when his or her own conduct induces the commission of the error.") (citing State v. Atkinson, 124 Idaho 816, 819, 864 P.2d 654, 657 (Ct. App. 1993)). Gorringer has failed to establish any basis for reversal of the district court's order denying his motion to dismiss.

CONCLUSION

The state respectfully requests that this Court affirm the judgment and sentence entered upon Gorringer's attempted strangulation conviction in Docket No. 39641.

DATED this 5<sup>th</sup> day of December 2012.

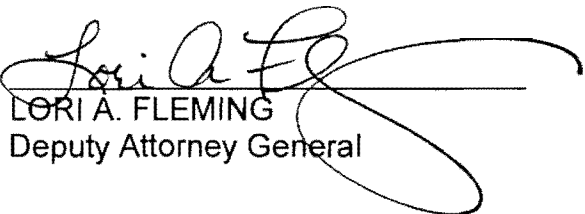
  
LORI A. FLEMING  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5<sup>th</sup> day of December 2012, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SPENCER J. HAHN  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

  
LORI A. FLEMING  
Deputy Attorney General